

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-074**

PAMELA RISINGER

APPELLANT

**FINAL ORDER
SUSTAINING HEARING OFFICER'S
V. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS**

APPELLEE

*** **

The Board, at its regular May 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated April 9, 2024, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer are approved, adopted, and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 17th day of May, 2024.

KENTUCKY PERSONNEL BOARD


GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Pamela Risinger
Hon. Kristin Wehking
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney Moore

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APPELLEE

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This matter came on for a pre-hearing conference on November 14, 2023, at 11:00 a.m. ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Pamela Risinger, was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Kristin Wehking. Both parties appeared by telephone.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by the Appellant, to determine the specific section of KRS Chapter 18A that authorizes this appeal, to determine the relief sought by the Appellant, to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

BACKGROUND AND FINDINGS OF FACT

1. The Appellant filed her appeal with the Personnel Board on June 8, 2023. She filed an appeal pledging she was penalized as follows:

Grieving the upcoming salary increase, as staff in admin bldg. does officer duties without officer pay. Wanting at least the locality pay.

2. At the pre-hearing conference a discovery schedule was set followed by a schedule for dispositive motion practice.

3. The Appellee filed a motion to dismiss arguing that the Personnel Board lacked jurisdiction over the Appellant's appeal. The Appellee argued that the Appellant failed to allege a penalization over which the Personnel Board had jurisdiction previous to the Senate Bill 153 version of KRS Chapter 18A. To the extent the Appellant was appealing not receiving raises that went into effect July 1, 2023, the Appellee argued the Personnel Board no longer had jurisdiction over salary issues once the new version of Senate Bill 153 went into effect.

4. Although given an opportunity to respond to the Appellee's Motion to Dismiss, the Appellant has failed to do so.

5. The Appellant is employed as an Offender Information Specialist I at the Kentucky Correctional Institution for Women. At the time she filed her appeal, the Appellant was aware that she was going to receive a six percent (6%) raise on July 1, 2023, based on the provisions of House Bill 444. She filed her appeal based on what she referred to as "astronomical" raises that other correctional employees were receiving as a result of Senate Bill 162. These raises were also scheduled to go into effect July 1, 2023.

6. As outlined in a memorandum dated May 1, 2023, from Commissioner Cookie Crews to all Department of Corrections employees, in addition to the above-mentioned salary increases, Correctional Officers, Correctional Sergeants, Correctional Lieutenants, and Correctional Captains would all receive a locality premium of \$5.23 per hour which would be effective May 1, 2023.

7. The Appellant failed to identify any statute or regulation which would entitle her to the locality premium increase. She also did not make any claim of protected class discrimination.

8. There are no genuine issues of material fact and this appeal can be decided as a matter of law based on the Appeal Form, the statements of the parties at the pre hearing conference, and the Appellee's Motion to Dismiss.

CONCLUSIONS OF LAW

1. Any raises the correctional employees received as a result of the general assembly's decision to grant some employees a salary raise are not reviewable by the Personnel Board. The Appellant's claim that she would not receive raises that other employees received as a result of Senate Bill 162, are outside the jurisdiction of the Personnel Board. *Hart v Personnel Board*, 905 S.W.2d 507 (Ky. App. 1995).

2. In addition, raises that went into effect July 1, 2023, are also outside the jurisdiction of the Personnel Board. Senate Bill 153, which went into effect July 29, 2023, eliminated the category of penalizations and the Personnel Board no longer has jurisdiction over salary issues. KRS 18A.005 and KRS 18A.095.

3. To the extent the Appellant is appealing not receiving the locality premium increase, which was received by Correctional Officers, Correctional Sergeants, Correctional Lieutenants, and Correctional Captains, the Appellant has failed to identify any statute or regulation which would entitle her to receive a similar increase. As such, she has failed to state a claim of penalization for failure to receive an increase based on locality premium on May 1, 2023. KRS 18A.005 (24)(under the old version of KRS Chapter 18A).

4. The Appellant also failed to make any claim of protected class discrimination.

5. The Appellant has failed to state a claim over which the Personnel Board has jurisdiction, therefore, the appeal should be dismissed. KRS 18A.095(16)(a) and KRS 13B.090(2).

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **PAMELA RISINGER VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2023-074)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within fifteen (15) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004)

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

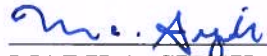
The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

Any document filed with the Personnel Board shall be served on the opposing party.

SO ORDERED at the direction of **Hearing Officer Mark A. Sipek** on the 9 day of April, 2024.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Kristin Wehking

Pamela Risinger

Hon. Rosemary Holbrook (Personnel Cabinet)